



April 13, 2001

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OR2001-1482

Dear Mr. Atwood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145979.

The Westlake Volunteer Fire Department (the "department"), which you represent, received a request for copies of all recording media or transcripts, work papers, letters, and meeting minutes for a specified department meeting as well as a copy of a specified letter. The requestor also asks for documents pertaining to the investigation of three specified individuals and the names of parties offering evidence in connection with the investigation. Additionally, the requestor asks for copies of department by-laws, rules, standard operating procedures, personnel policies, and employee handbooks. You claim that the requested information does not involve the "part, section, or portion" of the department supported by public funds under section 552.003(1)(A)(x) of the Government Code and, therefore, the requested information is not subject to the Public Information Act (the "Act"). We have considered your arguments and reviewed the submitted information. We have also reviewed the comments submitted by the requestor as well as the comments submitted by an attorney for the Harris County Rural Fire Prevention District No. 47. *See* Gov't Code § 552.304 (providing for submission of public comments).

In order to determine whether the department is subject to the Act, we must look at the scope and application of the Act and the definition of public information. Section 552.002 defines public information as follows:

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

A governmental body includes “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.” See Gov’t Code § 552.003(1)(A)(x). The receipt of public funds for the general support of the activities of a private organization brings that organization within the definition of a “governmental body” unless the public funds are paid in exchange for a measurable amount of service as would be expected in a typical arms-length transaction. Open Records Decision No. 228 (1979); *see also* Attorney General Opinion JM-821 (1987).

The courts also have considered the scope of the Act’s definition of “governmental body.” See *Kneeland v. Nat’l Collegiate Athletic Ass’n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989). In *Kneeland*, the court observed that in interpreting the predecessor to section 552.003 of the Government Code, the attorney general’s opinions generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide “services traditionally provided by governmental bodies.”

Id. In subsequent decisions, this office has found certain other private entities to be governmental bodies under section 552.003 of the Act or its statutory predecessor. See, e.g., Attorney General Opinion JM-821 (1987) (volunteer fire department receiving general support from fire prevention district); Open Records Decision Nos. 621 (1993) (Arlington Chamber of Commerce and Arlington Economic Development Foundation, through which chamber of commerce received support of public funds), 602 (1992) (portion of the Dallas Museum of Art supported by public funds), 273 (1981) (search advisory committee established by board of regents to recommend candidates for university presidency that expended public funds). In contrast, certain private entities were determined not to be governmental bodies under the statutory predecessor to section 552.003. See, e.g., Open

Records Decision Nos. 602 (1992) (portion of the Dallas Museum of Art not supported by public funds, in particular, a specific privately donated art collection), 569 (1990) (Fiesta San Antonio Commission, which leased facilities from city and received permits and licenses to use public streets for parades and other events).

You acknowledge that the department receives public funds from the Rural Fire Prevention District No. 47 (the "district"). However, you contend that the funds from the district are used only for the purchase of capital equipment and salaries for paid personnel. You inform us that the department receives the rest of its funding from voluntary donations and emergency services patient billings and that this money is used to fund the department's operating costs.

You have provided to this office a portion of the contract between the district and the department. Further, the requestor has submitted the entire contract effective January 1, 2001. The contract provides that the department will provide fire protection, suppression, and emergency services and that the sole responsibility of the district will be the providing of funds collected from property tax revenues. The contract in Attorney General Opinion No. JM-821 contained a nearly identical provision. As in Attorney General Opinion No. JM-821, the department must submit a copy of its operating and capital expenditure budgets to the district. Further, the contract provides that the district agrees to pay the department for operating expenses, debt retirement, and approved capital expense items. Based on our review of the contract, we conclude that the district provides general support to the department. Further, fire protection is a service traditionally provided by governmental bodies. *See Kneeland*, 850 F.2d at 224; Attorney General Opinion No. JM-821 at 5 (1987). Accordingly, we conclude that the department is a "governmental body" to the extent that it is supported by public funds received pursuant to its contract with the district.

Note, however, that if only a distinct part of an entity is supported by public funds, the records relating to that part or section of the entity are subject to the Act, but records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992); *see also* Gov't Code § 552.003(1)(A)(x). For example, in Open Records Decision No. 602 (1992), this office found that portions of the activities of the Dallas Museum of Art (the "DMA") were generally supported in whole or in part with public funds, specifically funds of the City of Dallas. In clarifying the scope of information held by the DMA that is therefore subject to the Act, this office stated:

Accordingly, records related to those parts of the DMA's operation *directly supported* by the city, such as records regarding maintenance and ownership of the building and grounds, the city's art collection, utility bills [paid by the city], salaries of those employees for whom the city pays a portion, and insurance policies on which the city has paid part of the premium, are subject to the Act. However, those areas of the DMA for which the city has not provided *direct support* are not subject to the [A]ct.

ORD No. 602 at 5 (emphasis added). Because the records at issue in that decision had only a *tangential* connection to those parts of the DMA's operations that received direct support from public funds, the decision concluded that the information at issue was not subject to the Act. *Id.* at 5-6.

The terms of the contract between the district and the department do not appear to contain any restrictions on the department's use of the public funds it receives from the district. You represent that the district only uses district tax funds for the purchase and maintenance of capital equipment and salaries of paid personnel. The contract provides that the department will maintain a separate accounting of the expenditures of the tax funds received from the district. Therefore, the department is a governmental body only with respect to those functions directly supported in whole or in part by district tax funds.

Under section 552.301(b), a governmental body must request a decision and state the exceptions that apply not later than the tenth business day after the date of receiving the request for information. Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D).

You have not informed this office of the date that you received the request for information. The request is dated January 15, 2001 and it appears to have been faxed to the department on that same date. Therefore, the department had until January 30, 2001 to request a decision from this office.¹ Because the request for a decision was faxed to this office on February 8, 2001, you failed to request a decision within the ten business day period as required by section 552.301(b). Further, you have not asserted any exceptions to disclosure of the requested information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not demonstrated a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977)

¹Because January 15, 2001 was a National Holiday, we calculated the ten-day deadline from the department's receipt of the request on January 16, 2001.

(presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, the department must release the requested information to the requestor only if the information pertains to the purchase and maintenance of capital equipment and salaries of paid personnel which you assert are the department functions supported in whole or in part by district tax funds. The department may withhold the remaining requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/rr

Ref: ID# 145979

Encl: Submitted documents

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